

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1032X

NEBRASKA, KANSAS & COLORADO RAILWAY, L.L.C.—ABANDONMENT
EXEMPTION—IN DECATUR, NORTON, AND PHILLIPS COUNTIES, KAN., AND
HARLAN COUNTY, NEB.

Decided: September 4, 2015

Nebraska, Kansas & Colorado Railway, L.L.C. (NKCR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 57.31 miles of rail line between (1) milepost 3.35 near Orleans, Neb., and milepost 29.84 at Almena, Kan.; (2) milepost 47.23 at Reager, Kan., and milepost 78.05 at Oberlin, Kan.; and (3) the Norton Spur in Norton, Kan. NKCR also will discontinue overhead trackage rights over a 17.7-mile line of railroad owned by Kyle Railroad between milepost 29.6 at Almena and milepost 47.3 at Oronoque Junction, Kan. Notice of the exemption was served and published in the Federal Register on August 7, 2015 (80 Fed. Reg. 47,557). The exemption is scheduled to become effective on September 8, 2015.¹

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on August 14, 2015, recommending that three environmental conditions be imposed on any decision granting abandonment authority, requiring NKCR to: (1) prior to the commencement of any salvage activities, consult with the Kansas and Nebraska Departments of Environmental Quality regarding fugitive dust, construction storm water, water quality, and waste disposal; (2) prior to the onset of salvage activities, consult with the Nebraska Army Corps of Engineers regarding proposed abandonment activities; and (3) in the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, immediately cease all work and notify OEA, interested federally recognized tribes, and the Kansas or Nebraska State Historic Preservation Office (SHPO). OEA would then consult with the SHPO, interested federally recognized tribes, and NKCR to determine whether any mitigation measures are necessary.

OEA issued its final EA on September 2, 2015. In the final EA, OEA states that it received a comment from the Kansas Department of Health & Environment, Bureau of Waste Management (BWM) that describes its concerns regarding the improper disposal of railroad ties following abandonments. BWM asserts that there is a history of railroad ties having been

¹ On September 2, 2015, Sunflower Rails-to-Trails Conservancy, Inc., filed a statement of willingness to assume financial responsibility for the subject line pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. That filing will be addressed in a subsequent decision.

improperly disposed of in the state and urges that OEA ensure that NKCR appropriately disposes of railroad ties following any abandonment approval. Specifically, BWM requests that NKCR notify BWM regarding the nature, location, size, time, and duration of any planned salvage activities (including tonnage, equipment, and contractor used). To ensure that BWM's concerns are appropriately addressed, OEA recommends that the following new condition be imposed: Prior to the commencement of any salvage activities, NKCR shall consult with BWM regarding the appropriate disposal of railroad ties and other waste materials. Therefore, the three conditions originally recommended in the EA and the new condition recommended in the final EA will be imposed.

Based upon OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on August 7, 2015, exempting the abandonment of the line described above is subject to the conditions that NKCR shall: (1) prior to the commencement of any salvage activities, consult with the Kansas and Nebraska Departments of Environmental Quality regarding fugitive dust, construction storm water, water quality, and waste disposal; (2) prior to the onset of salvage activities, consult with the Nebraska Army Corps of Engineers regarding proposed abandonment activities; (3) in the event that any archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, immediately cease all work and notify OEA, interested federally recognized tribes, and the Kansas or Nebraska SHPO. OEA would then consult with the SHPO, interested federally recognized tribes, and NKCR to determine whether any mitigation measures are necessary; and (4) prior to the commencement of any salvage activities, consult with BWM regarding the appropriate disposal of railroad ties and other waste materials.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.